



COMITÉ DES CONNÉTABLES

East Wing RJA & HS,
Route de la Trinité,
Trinity,
Jersey, JE1 1SB

Telephone: 01534 767555 Fax: 01534 767666

Our ref: KPV/srdeg

26 February 2010

Lord Carswell
Chairman
Review of the Roles of the Crown Officers
P O Box 1000
Highlands College
St Saviour
JE4 9QA

Dear Lord Carswell,

Review of the Roles of the Crown Officers

Thank you for your letter inviting the Comité to make a submission to your Panel. The Comité agrees that it is appropriate for it to comment on the following issues but individual Connétables may also wish to make their own submission to your Panel outlining their personal views on other issues which are not addressed in this letter.

The Connétables have what has long been regarded as a traditional role but it is nevertheless one that remains valued island-wide. The Connétables understand that the way this role is exercised needs to adapt to present-day requirements whilst respecting the traditions of the past. Likewise, the Comité is of the view that it is important to consider whether or not there is any conflict in the various responsibilities of the positions of the Crown Officers and, if so, to address possible solutions to those problems.

Part 1 – roles of the Bailiff (and Deputy Bailiff)

- The role of the Bailiff as Chief Justice, President of the States and civic head of the Island;

In our role as Connétables we have more direct contact with the Bailiff (and Deputy Bailiff) in the following areas:

- Visite Royale
- Licensing Assembly
- Public entertainment – Bailiff's Panel
- Liberation celebrations
- States Assembly

Visite Royale: the Bailiff presides over the Royal Court as it visits two Parishes each year. The full Court inspects the Parish accounts; receives verbal reports from the Connétable and Chef de Police (on parochial matters and on policing matters respectively); receives submissions made to it by the *Voyeurs* (an officially sworn-in body of parishioners) and the Court then, in full sitting, considers such submissions and decides thereon. The Court then tours the Parish and includes, if necessary, site visits on the submissions made.

The Visite Royale is indeed a long-standing tradition but it is important to retain the Island's tradition and heritage. The Visite Royale also plays an important role as the Royal Court has the opportunity to hold to account the elected officers of the Parish so as to ensure they are fulfilling the statutory and legal roles for which they have each sworn an oath before the Court. It also provides an opportunity for the Court to be appraised of parochial policing issues and trends which might not otherwise come to its attention.

Our recommendation is that the Visite Royale is an official sitting of the Court and the Bailiff, as chief justice, should preside.

Licensing Assembly: the Bailiff presides over the Licensing Assembly which sits four times a year to consider applications under the Licensing (Jersey) Law 1974; the December sitting is also the date on which the Connétable makes a report to the Assembly on the management of licensed establishments in his/her Parish together with Centeniers reports of any criminal prosecutions affecting those licences during that year.

This is similar to the Visite Royale in that the Licensing Assembly provides the opportunity for the Connétable to report on licensing issues to the body granting such licences but persons who have addressed the Parish assembly on a licensing application also have the opportunity to address the Court on that application. It might conceivably be argued that this is another example of a 'judicial' body carrying out an administrative role (determining the licence application) but it does allow for 'joined up thinking' and, in a small jurisdiction such as Jersey, it would seem unnecessarily complex to have separate bodies carrying out these roles.

Our comment is that as the Licensing Assembly relates to granting an application there could be a perception that administrative and judicial functions are exercised by the same body. We would add nevertheless that this does not appear to have been a problem in the past and it could be argued that as the Court deals with offences against the Licensing Law it is therefore ideally positioned to consider whether the granting of a licence may lead to further breaches of the law.

Public entertainment: the Bailiff's panel considers arrangements for public entertainment and co-ordinates the resources required; the Panel often needs to discuss arrangements with the Connétable of the Parish to ensure events are properly managed and policed. The Connétable is also able to voice his/her opposition to such an event.

The Bailiff's panel exercises its role with a 'light touch' in so far as the type of events permitted but would, of course, be able to refuse an event which offended the island's

laws. It also provides a useful focal point at which other agencies can be represented when determining public safety and other organisational matters related to an event.

We do not perceive any problem with the Bailiff continuing in this role as he takes advice from a Panel before determining an application; should an issue later come to Court there are other judges who could preside over such a case.

Liberation: the Bailiff, as civic head of the Island, leads the celebrations on Liberation Day and hosts various related receptions. We consider the Bailiff should continue to play a role in this event. Although the number of islanders who lived through the occupation of Jersey is dwindling – as are those who were evacuated from the island or served in the armed forces – this is a key event in Jersey's history and one which must be remembered. The Bailiff, as well as the Lieutenant Governor, represent the Crown on such occasions and provide dignity and gravity to these events.

States Assembly: the Bailiff presides over the States Assembly which the Connétables, as members of the States, attend. The Assembly of the States of Jersey grew out of the need for the Bailiff and Jurats to consult with the Rectors and Connétables of the 12 Parishes. By the 15th Century these meetings had become an established custom until the States '*Les États*' (the three Estates, the legislature represented by the Jurats, the church by the Rectors and the public by the Connétable) eventually became acknowledged by Act of 27th October, 1497. Since that date the twelve Connétables have remained as members of the States Assembly of the Island. They continue by virtue of their office, as the elected Parish Connétable, to retain their seats and represent their Parish.

The terms of reference do not set out the issues which appear to be of concern to those who repeatedly raise the issue of the role of the Bailiff (and Deputy Bailiff). Those issues are, we believe, that the Bailiff presides over the States but also over the Royal Court and the perception is that he therefore acts in both political and judicial roles. It is important that the person presiding over the States has the skills and qualifications – which ideally will include legal qualifications – to effectively undertake that role. It would seem to the Comité that the options are therefore:

- (a) Retain the status quo
- (b) Provide for an elected member to preside over the States Assembly - this assumes that there will be a person with the required skills/qualifications elected as a member of the States
- (c) Employ another person to preside over the States Assembly
- (d) Separate the functions of the Bailiff and Deputy Bailiff so that one is responsible for matters relating to the States Assembly and the other to the Royal Court.

It is interesting to note that Article 3 of the States of Jersey Law 2005 already provides that “an elected member” may be chosen to preside over the States if the Bailiff or Deputy Bailiff is unable to do so. However, “An elected member presiding at a meeting of the States shall not have the right to vote” (Article 3(4)) and this no doubt acts as a deterrent and is presumably one reason why no member has acted as President since the inception of this law.

Whilst the principles of modern, democratic and accountable governance and human rights may incline towards separating the various roles of the Bailiff, the Connétables are not aware of any difficulties which have arisen in practice and are mindful that a change – if any – must take into account the additional resources which might be required. Furthermore, should it be an elected member there is the question of the right to vote and if, as in Article 3, there is no right to vote whether or not this disenfranchises their electorate.

There is no Comité view on the preferred option as individual Connétables each have their own opinion.

Part 2 – roles of the Attorney General and Solicitor General

- The roles of the Attorney General (and Solicitor General) as legal adviser to the States of Jersey, to the Council of Ministers and to Scrutiny Panels, chief prosecutor, head of the Jersey honorary police, and acting in the interests of the Crown in Jersey;

In our role as Connétables, we have direct contact with the Attorney General and Solicitor General in the following areas:

- Titular head of the Honorary Police:
- Chief prosecutor
- Legal advice to the Parishes:
- Legal advice to the Comité des Connétables (and Supervisory Committee):
- Legal advice to the States Assembly:

Titular head of the Honorary Police:

The Attorney General is the titular head of the Honorary Police but Honorary Police officers are elected by parishioners to serve in their Parish. Each is accountable to the Connétable who is ultimately responsible for the effective and efficient policing of his/her Parish. The Attorney General's duties include advising the Royal Court on the suitability for swearing-in of officers elected by the Parish; accepting the resignation of an officer, and responsibilities under the Police (Complaints and Discipline) (Jersey) Law 1999.

It is interesting to note that in the Report of the Independent Review Body 'Police Services in Jersey' of July 1996 the Panel commented on the Attorney General:

7.1.1 He seems to us to be the titular head of the Honorary Police, not because that is a position which ordinarily falls to a government's principal legal adviser, but because there is no coherent structure for the 12 separate parish police forces and therefore no one else to assume the responsibility.

Whilst it may be viewed that there may not be a need for a titular head, the Attorney General acting in this role has never been questioned by members of the public. In the event of there being a need for a titular head it must be considered that as stated earlier Honorary Police officers are elected by parishioners to serve that Parish and it seems that the Attorney General has the necessary independence of all 12 Parishes to undertake this role.

It would therefore be possible for the Attorney General to nevertheless remain as titular head of the Honorary Police and, in such a role, to be able to provide legal advice and guidance to the Connétable and his/her Honorary Police officers.

Chief prosecutor:

The Attorney General is the Island's chief prosecutor and as such has responsibility for the prosecution service in Jersey; he thus works very closely with the Centeniers who are the only persons able to prosecute (it is well known the States Police do not take prosecution decisions).

However, we would comment that there are significant cost implications with removing the Attorney General from the role of chief prosecutor and the setting up of an independent department which in all probability would potentially have unlimited financial resource implications.

Legal advice to the Parishes:

The Parish administrations provide a 'local government' function and are responsible for the administration of a number of island laws and the delivery of statutory services. Legal advice is often required concerning such legislation and, in our opinion, it would not be sensible for each Parish to seek its own legal advice from the Parish lawyer – this could result in more than one, and possibly twelve different, legal opinions. It would also be extremely costly to parishioners who would have to meet such expenses through the rates.

As it is the States Assembly which makes the laws that the Parishes administer, it is entirely appropriate for the Attorney General to advise not only the States but also the Council of Ministers, and individual Ministers and their departments and the Parishes, when queries arise relating to the administration of that legislation.

Legal advice to the Comité des Connétables (and Supervisory Committee which has the same membership):

In the same way that the Parishes will seek legal advice relating to specific matters, the Comité will also seek the advice of the Law Officers on matters that affect several Parishes. As explained above, in our opinion it would not be sensible for each Connétable to seek his/her own legal advice from the Parish lawyer as this could result in more than one, and possibly twelve different, legal opinions.

The only occasion when the Law Officers have been unable to assist the Connétables was in relation to advising the Supervisory Committee on a specific matter which affected a States Department's liability to rates. The Supervisory Committee has a statutory responsibility under the Rates (Jersey) Law 2005 (and preceding Parish Rates laws). On this occasion the Committee engaged an Advocate to advise on the issue and, as might be expected, the advice differed to that received by the States Department from the Law Officers.

Legal advice to the States Assembly:

The States of Jersey Law 2005 provides that both the Attorney General and the Solicitor General may sit in the States Assembly as they are the legal advisers of the States. Although they both have the right to attend they do not usually attend together.

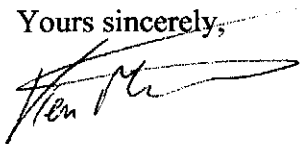
They have the right to speak on all matters of States business but not to vote and, by convention, they do not generally speak on political matters other than those in which they have a direct official interest. Any member may request a Law Officer to give legal advice on any matter currently before the States and this is frequently requested. It is essential that States members have access to legal advice during their deliberations and there must therefore be an officer available to provide this.

The Connétables are most grateful to the Attorney General and Solicitor General for their legal advice and opinion on a wide range of issues. This advice is based on their knowledge and experience of the States and Parishes administrations and its rich history. The Law Officers deal on a daily basis with government departments both locally and worldwide and it is difficult to imagine any other legal practice having such expertise to inform the advice given.

The Connétables are aware that one of the contentious issues for States members is that legal advice provided by the Law Officers to the Council of Ministers is not also available to Scrutiny Panels and States members generally. Another is the concern that the Law Officers may address the States Assembly other than when requested to do so to give legal advice.

Again these are issues on which individual Connétables each have their own opinion and there is no Comité view on the matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K P Vibert', written over a horizontal line.

K P Vibert
Chairman.